IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 7TH DECEMBER 2006 / 16TH AGRAHAYANA 1928

WP(C).No. 25336 of 2005(N)

AGAINST THE ORDER IN E.P.79/1989 IN
OS.4/1986 of PRINCIPAL SUB COURT,KOLLAM

.....

PETITIONER:

S.K.RAMACHANDRAN PILLAI,
SREERANGATHU ASRAMATHIL,
MOTTACKAL MURI, THEVALAKKARA.

BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM)
SRI.S.HARIKRISHNAN

RESPONDENTS:

---

1. VIJAYAN, KETTIDATHIL VEEDU,
KOTTAPURAM MURI, WEST KALLADA.

2. RATNAMANIAMMA, MULAMEL VEEDU,
KOIVILA VADAKKE MURI,
THEVALAKKARA VILLAGE.

BY ADV. SRI.S.GOPAKUMARAN NAIR
SRI.M.P.MADHAVANKUTTY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:

EXT.P1: COPY OF ORDER DT.25.2.04 IN EP 79/89 OF PRL.SUB COURT, KOLLAM

//True copy//

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.25336 OF 2005

Dated 7th December 2006

JUDGMENT

Petitioner is decree holder. Respondents are judgment debtor. As per the decree petitioner is entitled to recover the possession of plaint A schedule theatre, furniture and machinery installed therein as noted by the commissioner in Ext.C1 report provided petitioner pays or deposits Rs.8,000/- to first judgment debtor. Decree provides that on such deposit, petitioner is entitled to realise Rs.1,200/- per month as mesne profit till the date of getting possession of the property. Under the decree respondents are also restrained by a perpetual injunction from demolishing or altering the theatre building or from removal of any machinery or furniture therefrom or inducting third party into possession. Claim for realisation of past mesne profits were disallowed. Execution petition was filed for recovery of possession and future mesne profits. Under Ext.P1 order execution petition was dismissed finding that though decree was passed on

31/12/1986, amount provided under the decree was deposited only on 20/2/1989 and first respondent had expressed willingness to handover the key in writing and the furniture and machinery were lost by efflux of time and therefore petitioner is only entitled to realise mesne profits from 20/2/1989 the date of deposit till 6/12/1989. This petition is filed under Article 227 of Constitution of India challenging Ext.P1 order.

2. Learned counsel appearing for petitioner and respondents were heard.

3. On hearing the learned counsel appearing for petitioner and respondents, it is clear that executing court has not considered the claim in the proper perspective. Decree provides for recovery of possession of the theatre and machineries installed therein as well as the furnitures, which were noted by the commissioner in the report submitted to the court. The finding of the executing court was that by efflux of time machineries and furnitures were lost. It is not known how by efflux of time machineries and furniture and the theatre would be lost. This is a matter which should have been considered by the executing court. Even if first

respondent has expressed willingness to handover of the key, it does not follow either that theatre building or furniture or machineries would be lost by efflux of time. Ext.P1 order is quashed. Executing court is directed to consider the execution petition afresh and dispose the same in accordance with law. Parties are directed to adduce further evidence, if so advised.

Writ petition is allowed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.